

REMARKS

The Non-Final Office Action, mailed October 28, considered claims 1, 2, and 5–10. Claim 10 was rejected under 35 U.S.C. § 101, because the claimed invention was directed to non-statutory subject matter. Claims 1, 2, 6, and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, U.S. Patent No. 5,956,488 (filed Mar. 15, 1996) (hereinafter Suzuki), in view of McClain, U.S. Patent No. 6,772,214 (filed Apr. 27, 2000) (hereinafter McClain). Claims 5 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of McClain, and further in view of Kuhn, U.S. Patent Pub. No. 200/0157112 (filed Mar. 13, 2001) (hereinafter Kuhn). Claims 8 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki, in view of McClain, and further in view of Imajima et al., U.S. Patent No. 6,211,901 (filed May 21, 1996) (hereinafter Imajima).¹

By this response, claims 1 and 10 are amended such that claims 1–2 and 5–10 remain pending.² Claims 1 and 10 are independent claims which remain at issue. Support for the amendments may be found within Specification ¶¶ 56–59.³

As reflected in the claims, the present invention is directed generally toward the aggregation of streaming media to improve network performance. Claim 1 recites, for instance, in combination with all the elements of the claim, method for providing real-time streaming media from a wide area network to a plurality of receivers. The method includes receiving one or more requests for streaming media from a number of receivers. The each request contains a unique identifier identifying a particular receiver and access rights associated with the particular receiver. The received access rights are compared with access and security information stored within a database. It is determined determining whether access is to be denied or restricted to the real-time streaming media for each receiver and each user of each receiver. A list of all the unique identifiers which have been received are stored. It is determined if the number of

¹ Although the prior art status of the cited art is not being challenged at this time, Applicants reserve the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² The amendments and remarks presented herein are consistent with the information presented by telephone by patent attorney Thomas Bonacci (reg. no. 63,368).

³ Please note that the paragraph numbers are taken from the published application, U.S. Pat. Pub. 2003/0005455 (Jan. 2, 2003). It should also be noted that the present invention and claims as recited take support from the entire Specification. As such, no particular part of the Specification should be considered separately from the entirety of the Specification.

received requests exceeds a maximum for maintaining a connection rate of a shared network and a plurality of requests are aggregated into a single request. The single request for a copy of the media is sent to the network. A copy of the media is buffered at an aggregation module and is delivered to each of the requesting receivers. A notice is delivered to each receiver and user for which access is denied. The activities of the receivers is also tracked to identify frequently requested media.

Claim 10 recites a computer program product embodiment of the method of claim 1.

Independent claim 10 was rejected under 35 U.S.C. § 101 as being directed toward non-statutory subject matter.⁴ In particular, the Office asserted that the claimed "computer-readable storage medium" was defined in the specification to include a "communications connection" constituting a "signal *per se*."⁵ Claim 10 has now been amended to limit the claim to *physical* storage media so as to exclude communications connections. In view of the amendment, the Applicants respectfully request the rejection under 35 U.S.C. § 101 now be withdrawn.

Independent claims 1 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Suzuki and in view of McClain.⁶ The claims have now been amended and the Applicants submit that the prior art fails to teach or suggest all the limitations of claims 1 and 10 as they are now recited.

In particular, the Applicants submit that the prior art fails to teach or suggest that each request comprises access rights associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers. The prior art also fails to teach the aggregation module comparing the access rights received in each request and associated with the particular one of the plurality of receivers making the request and with the particular user of the particular one of the plurality of receivers with access and security information stored within a database. The prior art also fails to teach determining whether access is to be denied or restricted to the real-time streaming media for each of the plurality of receivers and each user of each of the plurality of receivers. The prior art also fails to teach delivering a notice to each receiver and user for which access is to be denied.

⁴ Office Communication p. 6 (paper no. 20081014, Oct. 28, 2008).

⁵ Office Comm. pp. 6-7.

⁶ Office Comm. p. 7.

Further, in responses to previous office actions the Applicants have particularly pointed out other distinctions over the prior art and have respectfully traversed a number of the Office's assertions as to particular teachings of the cited art and assertions as to how particular passages cited within the prior art read on particular limitations as claimed in the present invention. The Applicants respectfully reassert and again incorporate those distinctions and traversals as discussed within the previous responses.

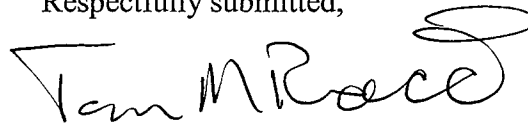
Because of at least the noted distinctions, the Applicants submit that the prior art fails to teach all the limitations of claims 1 and 10 as now recited. Accordingly, a rejection under 35 U.S.C. § 103 would be improper and should be withdrawn. Correspondingly, the Applicants respectfully request favorable reconsideration of independent claims 1 and 10 and each of the respective dependent claims.

In view of the foregoing, Applicants respectfully submit that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

Dated this 9th day of February, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger". The signature is stylized with a large, looping "R" and "N".

RICK D. NYDEGGER

Registration No. 28,651

JENS C. JENKINS

Registration No. 44,803

THOMAS M. BONACCI

Registration No. 63,368

Attorneys for Applicant

Customer No. 47973

RDN/JCJ/TMB:crb
2269796_1